

DMR ADVISORY COUNCIL MEETING
January 15, 2002, 1:00 p.m.
Minutes

1. Welcome

A meeting of the Department of Marine Resources (DMR) Advisory Council (AC) was held on this date at the DMR office building in Hallowell. Council members who attended the meeting: Chair Blair Pyne, Lori Howell, Kristin Porter, David Pecci, David Turner, William Sutter, Jennie Bichrest, Dana Rice, Steve Train and Charlton Ames. Department staff included Commissioner Lapointe, Deputy Commissioners Estabrook and Flagg, Col. Fessenden, Terry Stockwell, Linda Mercer, Deirdre Gilbert, Matt Cieri, David Libby, Heidi Bray, Andrew Fisk and L. Churchill. Other attendees included Arthur Pierce Jr., Doug Alexander, Rick Wallace, Sebastian Belle - Maine Aquaculture Association, and Susan Joes – Commercial Fisheries News.

4. Report(s): Dep. Comm. Estabrook provided a brief Legislative update. See handout of bill titles.

2. Approval of minutes (Handout)

Motion: *(D. Turner, L. Howell) Approved, S. Train, J. Bichrest abstained. The council voted to accept the minutes of the meeting held November 20, 2002 with a correction in section 4, 7th line from the bottom: change the word “end” to “begin”.*

3. Regulations – Action

- Chapter 11.20(B) Kittery Area – Season (Handout)

Terry Stockwell gave a review of the proposed rulemaking, see handout. Discussion points included: clarification of separate starting dates for draggers versus divers; basis for documenting migrating lobsters is anecdotal from lobster fishers; gear conflict is a primary reason; presented as a local solution to a local problem and was requested by Senator Lemont (Kittery) and local fishers, including lobstermen, scallopers, draggers and divers, as a result of fixed and mobile gear problems last years that have continued this year; two public community meetings were held prior to the rulemaking hearing; rulemaking was requested in lieu of coast wide legislation; should not support spot zoning; lobster traps left in the water all winter for storage instead of removal is unfair to draggers; this could be used as a future reason the change the statewide opening of the scallop season to January instead of December as November was moved to December in recent years; Dana Rice described the first separate scallop rules implemented about 35 years ago and were located in Gouldsboro Bay where over time the conflicts worked themselves out; a coast wide single opening season date was fought for in the Legislature just a few years ago and this would alter the intent of that law that provides relief for boats concentrating in a single area that opens before another area; too much is done to favor the lobster fishery that results in unfair rules for mobile gear fisheries; Col. Fessenden pointed out that the best solution to conflict is communication and his office works out problems with mobile gear frequently and for example repealed an old dragger restriction in Penobscot Bay last year; and a conscious effort was made to address this issue through the public process.

Motion: *(D. Turner - 1st to approve, L. Howell – 2nd for purpose of discussion)*

AC members' discussion points - D. Rice: better to address this as a regulation then through legislation. D. Turner: He has seen the results of (conflictive) separate opening dates in Cobscook, he would support this rulemaking however, he may not support similar piece meal type rules in the future should there be many more similar requests. L. Howell: She has talked with locals whose fears were allayed by this proposal, however she would be concerned if similar such rules began appearing next year. B. Sutter: This should go to the Legislature and not piece meal the coast. S. Train: This could result in displacement of effort; therefore could a sunset date be added to the rule? Answer: Comm. Lapointe explained that as a regular rule it could be repealed through the regular rulemaking process. Chair Pyne: Or it could go back through the rulemaking process with the sunset added. K. Porter: Prefers not to have to go through the Legislative process again or every two-year and does not want this to become a trend.

Motion continued: Votes by AC member: J. Bichrest – Yes; D. Rice – Yes; C. Ames – abstained; S. Train – No; Chair B. Pyne – chair abstains; L. Howell – Yes; K. Porter – No; D. Pecci – Yes; D. Turner – Yes; B. Sutter – No. B. Sutter then quoted 12 MRSA §6024(4) Council Actions, “An affirmative vote of a majority of the members present at a meeting or polled shall be required for any action. No action may be considered unless a quorum is present or, if there is no meeting, a quorum responds to a written poll.” **Therefore the regulation, on Chapter 11.20(B) Kittery Area – Season, does not pass by failure of one vote less than the count of 6 affirmative votes representing the majority of the 10 AC members present.**

- Chapter 25.94(2)(e) Lobster Management Zones, Zone E, and Chapter 25.94(2)(f) Lobster Management Zones, Zone F (Handout)

Terry Stockwell gave a review of the proposed rulemaking, see handout.

Present at the meeting were Rick Wallace from Zone E, and Arthur Pierce Jr. and Doug Alexander both from Zone F. Each was invited to present their respective views. Doug Alexander, district 9 representative in Zone F supported the rulemaking as presented based on the public comments and input that address the outside area where the problem lies with the 49/51% law. Arthur “Sparky” Pierce Jr., Zone F opposed the rulemaking; he reviewed the history of the E/F boundary line development and explained he felt that the only reason this has been sought is to preserve territory and what comes down to fiscal economics. He described his traditional fishing area was the edge of the bottom that he no longer fishes because it has become too congested with other traps. He asked for clarification as to how tags would be handled if this were adopted after the start of the license year. Col. Fessenden explained that arrangement would be worked out to accommodate this issue. Rick Wallace, Zone E supported the proposal; in his opinion it has been a generation issue and the proposed compromise would support the traditional fishermen from Small Point (Zone E fishers); over the past 3 years Zone F has had a problem and fishers in Zone E are just trying to stop more traps coming into our area.

Discussion points: This was a compromise between the proposed boundary and the existing boundary; Zone E did not agree to a buffer since they're trap limit is 600 versus 800 in Zone F therefore is Zone F fishers want to fish in Zone E they must fish the more restrictive trap limit of 60. The Zone E boundary is a wall. Limited entry ratios have driven this issue.

Motion: (C. Ames - 1st to approve, D. Turner - 2nd)

AC members' discussion continued. D. Rice asked if the fishing pressure around “Sagadahoc” that Arthur Pierce Jr. described is new since after the boundary line became effective. S. Train responded that the pressure there results from the changes to restriction on the groundfish industry. Therefore the effort there is not historical. T. Stockwell said that the short answer is yes and the

effort is changing; however the area inside the 3-mile line has been contested for the past 2-3 years.

Motion continued: Votes by AC member: J. Bichrest – abstained; D. Rice – abstained; C. Ames – Yes; S. Train – No; Chair B. Pyne – chair abstains; L. Howell – Yes; K. Porter – Yes; D. Pecci – Yes; D. Turner – Yes; B. Sutter – abstained. **The regulation, on Chapter 25.94(2)(e) Lobster Management Zones, Zone E, and Chapter 25.94(2)(f) Lobster Management Zones, Zone F, does not pass by failure of one vote less than the count of 6 affirmative votes representing the majority of the 10 AC members present.**

- Chapter 45.05 – Season (Handout)

Motion: (K. Porter, S. Train) Unanimous. The council voted to approve the regulations for Chapter 45.05 on the Shrimp Season as written.

B. Sutter asked for clarification on the existing language in Chapter 45 that refers to the season being established between the dates of December 1 and May 31. Col. Fessenden will get back to him on this.

4. Reports continued: Updates on NEFMC and ASMFC updates (Handout)

Deputy Commissioner Flagg reviewed the various council activities for the AC members. The next council meeting is to be held January 28 – 30th in Portsmouth.

Discussion items: J. Bichrest suggested that the Attorney General's oversight on the Stinson Connors Consent Decree should be looked into, as fish were available from Rhode Island last year and Stinson was reported to not have sought those fish due to transportation costs; a New Bedford mackerel processing plant and pressure on herring; the rebuilding date for groundfish has been set as May 1, 2004; there are 2 council seats available, Dana Rice is eligible for another term however Barbara Stevenson's seat must be replaced; and the limit on dogfish by catch will be looked up for J. Bichrest.

The Bureau of Marine Resource Director Linda Mercer provided a draft of the Annual Research Report to the AC members for their review. See handout. She explained that much of the report is status quo based on the current budget. Many activities are funded through federal grants and some delays are expected in the receipt of NE Consortium funds now; and many general fund items are federal matching funds.

Discussion dialogue highlights: L. Howell requested that this be added on the February meeting agenda allowing time to review. B. Sutter expressed concerns about available budget, prioritizing research dollars, and requested that the AC engage an independent marine scientist to review the report with the draconian funding cuts that the Department is facing. Comm. Lapointe explained that the agency sought public industry participation in a review of the research priorities in 1999-2000. Dep. Comm. Estabrook explained that about 10 years ago 80% of the research budget was based on the State's general fund source. Now it is down to 65% and the rest is dedicated or federal monies. Research may therefore be driven by funding source and examples include: clam research may be at risk by general fund reductions, dedicated urchin research dollars may be raided by the Legislature, federal monies with non-federal matching funds may be at risk, etc. The nature of the funding doesn't always allow alternative research applications. Therefore when prioritizing research the budget must be considered too. B. Sutter: There should be new dedicated

funds. Comm. Lapointe explained that a surcharge was contemplated on lobster licenses for research that is now mostly federally funded. B. Sutter: An independent scientist should review the research plan and how it will be funded; without this assistance this council cannot accomplish this review. D. Rice suggested that it would be easy to prioritize and asked why an independent review is needed? B. Sutter explained that the research should be prioritized based on the value of the fishery or by its "potential value". Surcharges. Comm. Lapointe suggested that an independent scientist would be unable to address policy issues and most questions may be asked directly of the agency. Regarding surcharges, such funding does not require an independent assessment. B. Sutter contended that for the AC members to fully understand the report there should be an independent scientist review the report for them as the Department has an old mind set, and is unable to think "outside the box". This is the one-year this should be done. L. Mercer pointed out that much of the research is tied to the State's agreements with and participation in several interstate fisheries management plans and councils. B. Sutter: How is the Burnt Island program funded? L. Mercer: Privately. J. Bichrest: This is unclear as to the reason to prioritize everything by value; if research is funded for results that help only 5 persons versus many clam diggers that is spread over helping many persons the monies and research results impact larger number of persons; why the science; we can think outside the box as all the members here bring different expertise and we don't need to spend money that we don't have. C. Ames: He complimented Linda on the report as there have been many years when no report like this one was available; and this is not the forum to discuss this; we could use an ad hoc committee to assist the council on this review. L. Howell agreed with this suggestion. D. Rice: He understands Bill however he doubts that there would be agreement on how that person would prioritize the research. Yesterday a trawl survey steering committee meeting was held that discussed the trawl survey positively and the results of that funding was a good way to go; federal dollars will be lighter. Comm. Lapointe: The research prioritization in 1999-2000 was a big process to compare this too however, if that work is now not relevant then maybe we need to recreate that process that was started based on criticism of scallop dragging in Kittery. B. Sutter: Since he works long hours he does not have the time to ask Commissioner or Linda what things mean and to determine those or what is severely impacted it would be an advantage to hire out what he feels he cannot do. Comm. Lapointe pointed out that he or a member of the AC would still have to ask an independent scientist the same questions and suspect that his points of contention sound similar to those he expressed seeking special license exemptions for a Crangon fishery that should be discussed separately. B. Sutter disagreed explained that the mind set of the Department is wrong as the Commissioner has chosen to pursue Legislation on the culling of sea urchins aboard vessels that is easy for divers and unfair to druggers and contrary to independent interest expressed by the sea urchin zone council. Comm. Lapointe explained that in addition to an independent scientist review of the research priorities other consideration must also be taken into account that includes policy, enforcement and management. B. Sutter stated that the Department would not change. L. Mercer offered to give a brief power point presentation of the various agency programs during the next meeting to help elaborate on the research plan. Chair Pyne: What is the status of the last inshore trawl survey? L. Mercer: The agency has funding through 3 more surveys i.e., spring, fall and spring with the recent data to be presented at the upcoming Fishermen's Forum. K. Porter: The trawl survey acceptance is improving and it would be good to use some of the data to help fishers. How much is needed? L. Mercer: Three years is the beginning of a time series and will be used in the next lobster (interstate) plan; and already is being used for v-notch data. Improvement is being noticed in the groundfish populations including the juveniles. D. Rice indicated that the general consensus is that it is positive.

5. Regulations – Pending

Col. Fessenden briefly reviewed the status of proposed rulemakings in Chapter 25.96 Lobster Apprentice Program and in Chapter 45 Corrections for consistency with mesh sizes in Chapter 34 Groundfish and court order.

Chapter 25.08(B)(3)(a) Double Tagging in Zone G, requested hearing January 23, 2003

T. Stockwell explained that this is another proposed rulemaking developed as a local solution to a local problem and requested council members advice on how to proceed based on their actions rejecting 2 prior rulemakings at this meeting and is it worth the time put into this. S. Train said that he would not support the proposal. Chair Pyne indicated that this mean that (we) can't abstain. C. Ames stated that he would not have abstained from the first vote had he known prior to the vote that B. Sutter was going to raise this technicality. D. Rice: Regarding E and F, if for enforcement purposes it is considered the best recommendation versus supporting the best consensus, it should be carefully considered. If something benefits someone personally then they should back off. L. Howell: Abstaining should be acceptable and spirited debate encouraged. B. Sutter suggested that is a local solution for a local problem implements broader state rules the state wide versus local should be considered. S. Train explained that he has been swayed at these meetings several times, does not consider his vote to be a rubber stamp and when it comes to something that works versus discrimination he will defend his vote any day should he take sides. Chair Pyne: To T. Stockwell, please keep bringing the issues forward as you have; the halibut rulemaking was an example of a reversal correction when it became clear there was some unintended misunderstanding about the proposal.

4. Reports continued

DMR biologist Matt Cieri gave a power point presentation on Multispecies Virtual Population Analysis.

5. Regulations – Pending continued

Chapter 2.10(3)(3) Environmental Characterization and Baseline and Chapter 2.27 Department Site Review, Documented Information - major substantive; and Chapter 2.10, 15, 37, 40, 64, 75, routine technical rulemaking, Hearings January 7, 8, 9. (Handout)

Andrew Fisk gave a briefing on the proposed regulations and answered questions about bonding and legislative bills pending this session and any impact on those.

David Libby gave a brief overview of the development of a New Reporting Chapter for landings data that would consolidate reporting requirements out of 14 separate chapters in to one chapter. Some reporting now goes to the fed's first, other is sporadic and he seeks all of it to be first warehoused in DMR. The Lobster Advisory Council has previously been briefed on this proposal as lobster dealers are being sought to provide consistent reporting. Meetings have also been held with the Dealers Association and 3 informational meetings were held in December in Machias, Rockland and Portland. Another key issue is the loopholes between wholesalers and retailers that would be filled by a no cost buyer permit. D. Pecci asked if he would include the \$27 million recreational fishery landings.

Chair Pyne asked if members would consider writing their comments on the research report in time to then return them by mail to each other to review before the next meeting. K. Porter supported the idea. Friday, January 31, 2003 was selected as the deadline for all members to mail their comments to the Department that will be then consolidated into a packet, copied and redistributed

to all members. Send comments to L. Churchill who will copy and re-mail out to the members. Members absent from this meeting will be contacted to ensure that they received the report and are informed of the deadline and discussion to be held next meeting.

6. Other Business

Election of Officers

Motion: *(J. Bichrest, D. Turner) Unanimous. The council voted that the officers currently in their positions be reelected to retain their status as follows: Chair Blair L. Pyne, Vice-Chair Steve Train and Secretary David Turner. Congratulations to each.*

Motion: *(J. Bichrest, D. Turner) - the council members voted to adjourn.*

Reminder: The February meeting is Wed., Feb. 12, 2003